IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6297 of 2003

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MENABEN @ BEBLI, WIFE OF KISHAN CHATUR CHUNARA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MS PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order passed by Police Commissioner, Ahmedabad City, on 1st April 2003 in exercise of powers conferred upon him under section 3(1) of Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the

petitioner to be a "bootlegger" and directing the detention of the petitioner under the PASA Act.

2. The grounds served upon the petitioner and placed on record reveal that the detaining authority took two aspects into consideration. Firstly, the registration of the crimes against the petitioner under the Bombay Prohibition Act, in all seven, on different dates wherein the petitioner was found in possession of country liquor. The seven offences came to be committed from the period from 13th February 2002 to 16th March 2003. The detaining authority also took into the consideration the fact that two informant witnesses stated before the proposing authority about the incidents occurred on 9th March 2003 and 14th March 2003 wherein the petitioner stated to have picked quarrel with the said witness and when crowd came to rescue the witness, the petitioner threatened the crowd by showing knife and due to fear the crowd was disrupted. The identity of the witnesses were kept secret under section 9(2) of the PASA Act. The statements of the said witnesses came to be recorded by the proposing authority on 20th March 2003 and verified by the detaining authority on 28th March 2003. After relying on the abovesaid material the detaining authority passed the impugned order.

3. Learned Advocate Mr. H.R. Prajapati for the petitioner and learned AGP Ms Panchal were heard in detail. Ms Panchal, learned AGP, placed on record affidavit in reply of the detaining authority, which is also taken into consideration.

4. Amongst various contentions raised on behalf of the petitioner, and controverted by learned AGP, it appears that the petition can be disposed of on the ground that whether the maintenance of public order is affected as alleged by the detaining authority. Learned AGP Ms Panchal has drawn my attention to the statements of witnesses where in latter part the petitioner is alleged to have threatened the crowed of people and due to fear the crowd was disrupted and vehicular traffic was affected. Learned AGP contended that this amounts to affecting of maintenance of public order and therefore the order passed declaring the petitioner to be bootlegger and his activities to be affecting maintenance of public order is sustainable. The merits of the matter undoubtedly go to establish that as many as seven cases are registered against the present petitioner for the possession of country liquor. When the investigation papers served upon the petitioner are taken into consideration, not an iota of fact disclosed that merely

by registration of the said offences under the Bombay Prohibition Act, the public order as envisaged by the PASA Act is affected. None of the case registered against the petitioner reveals that the possession of country liquor even for selling the same is affecting the larger section of the society so as to disrupt the public order. So, undoubtedly, as revealed from the grounds itself, merely registration of cases under the Bombay Prohibition Act against the petitioner would not lead a conclusion that the activity of the petitioner was affecting the maintenance of public order. So far as the statements recorded by the proposing authority and verified by the detaining authority are concerned, one has to cull out the difference between the "maintenance of law and order" and "maintenance of public order". The public order includes very large section of society and repeated attempts of assaults to disrupt the maintenance of public order. Of course, the public order includes the tempo of the life of the community taking the community as a whole, or even a specified locality. Therefore, the public order within the meaning of PASA Act means causing a general disturbance and its effect upon the life of the community even in a locality and which can make disturbance by the frequency of the occurrences. The other disturbances are not "maintenance of public order", but "maintenance of law and order". If the case of the detaining authority is taken at its face value, then except the two incidents wherein the petitioner alleged to have threatened the crowd gathered in a quarrel between the witness-informant and the petitioner, no other allegations about the frequent occurrence is made by which either the tempo of public life has affected or section of society or even a locality is so disturbed that the life becomes difficult. The incidents alleged even if taken to be true are such stray incidents that it could be branded only as a disturbance to law and order. In this view of the matter the subjective satisfaction of the detaining authority in respect of the activities of the petitioner affecting the public order is without application of mind and the order impugned in this Special Civil Application is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed. The order passed by the Police Commissioner, Ahmedabad City on 1st April 2003 against the petitioner in exercise of powers under section 3(1) of the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute with no order as to costs.

[J.R. VORA J.]
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